

D - 2356

D - 2357

SHANGHAI MUNICIPAL POLICE.

SHANGHAI MUNICIPAL POLICE
C. & S. B. REGISTRY
File No. 2356.

REPORT

Special Branch

Date: August 18, 1932.

Subject (in full). Arrest of Mo Tseng Khe (馬振凱) on Yangtszepoo Road
on May 10, 1931.

Made by D.I. Kuh Pao-hwa. Forwarded by DB. Ru. SI

With reference to the endorsement of the Officer i/c Special Branch dated August 16 on the attached file relating to the arrest of a communist suspect named Mo Tseng Khe on Yangtszepoo Road on May 10, 1931, I have to state that in view of this individual having been detained in custody for more than fifteen months during which period the Chinese Authorities failed to prove a *prima facie* case against him, I am of the opinion that the judgment rendered on August 15, 1932 should not be questioned.

JK

Kuh Pao-hwa

D. I.

Officer i/c Special Branch.



CCP

Extract of Daily Intelligence Report dated 17/8/32

Communist Propaganda - Result of Court Proceedings
against communist suspect

Following protracted proceedings, Mo Tseng Khe (馬振凱) who was arrested on May 10, 1931 on the authority of a warrant issued at the instance of the Public Safety Bureau on a charge of propagating communism, appeared on remand before the Second Branch Kiangsu High Court on August 15, 1932 when he was ordered to be released.

Extract of Proceedings in S. S. D. Court for

19

F. I. R. No.

SHANDBERG POLICE
C & S. B. M.

Reg. No. 100

Stn. 100

Procurator

Per. 1900. I. Revised 5-31. G. 100 m-5-31.

No. 100

Date 16/1/33

Shanberg

Shanberg

Shanberg

Shanberg

No. 100 approved by the Police.
Judgment only.

Decision. not Guilty.

Cole

S2,

for short comment on
ments of decision.

M

S. Kuh. ^{in C.R.C.}

16:8:33

SKR 17/8

*A.K. 17/8
Kuh.*

Copy for Special Branch
SHANGHAI MUNICIPAL POLICE
C. & C. D. REGISTRY

SHANGHAI MUNICIPAL POLICE.

CRIME DIARY.

D. 356
D. 1618132CRIME REGISTER No: Ref. No. 16/31.
Assistance to O.O.L."D" Division.
Xiaogtaizapao Police Station.
August 15th, 1932.

Diary Number:—

Nature of Offence:—

Time at which investigation begun and concluded each day	8a.m. - 12 noon 8-832.	Places visited in course of investigation each day.	S.S.D. Court.
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RECORD OF INVESTIGATION.

The accused Mo Tsung Khe again appeared before the S.S.D. Court on 15-8-32, when the following judgement was rendered.

"Accused not guilty".


 D.S. 34.

D. D. O. "D".

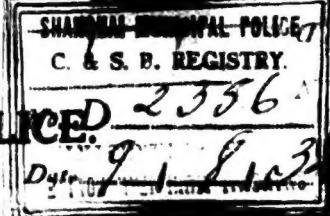
Officer i/c Special Branch.

52
Please prepare a paragraph
on this case for inclusion in Daily
Intelligence Summary.

16:8:32

SHANGHAI MUNICIPAL POLICE

CRIME DIARY.



CRIME REGISTER No:— Ref. No. 16/31.
Assistance to O.O.L.

"D" Division.
Yangtszepoo Police Station.
August 8th, 1932.

Diary Number:—	Nature of Offence:—
Time at which investigation begun and concluded each day 8 a.m. - 11 a.m., 8-8-32.	Places visited in course of investigation each day. High Court.

RECORD OF INVESTIGATION.

(a) (b)
This case again came up for hearing at the High Court this a.m. After a short interrogation of the defendant Mo Tsung Khe, by Judge Sung, the case was remanded for judgement on 15-8-32.

M Kennedy
D.S.

D.D.O. "D"

Officer A/c S.B.

Reg. Please attach file.

9-8-32.

SAC
File attached.
Add

\$2, Further report on
due course.

W
9-8-32

R
9/8

Political Section

SHANGHAI MUNICIPAL POLICE
S. S. D. COURT & CIVIL REGISTRATION

Extract of Proceedings in S. S. D. Court for 18/7/1919 F. I. R. No. 1817 + 32
Reg. No. 1817 + 32 Stn. Yangtze-poo. Procurator. Tseng. N. Judge. T. H. India.
Pm. L. D. I. Revised 5-31. G. 100 m-5-31.

Short Hand.

Risk Court of Appeal.

Proceedings.
Judge.

Mr T S Lin appeared for the Police.
Mr Zung Yung Lin appointed for the accused.

Judge :- It is the Prosecutor's duty to announce the grounds for the prosecution against the accused.

Prosecutor :- The grounds are mentioned in detail in the petition.

Accused :- I was previously engaged in the Ewo Cotton Mill. Although a strike had taken place, I still carried on with my work. There are many departments in the mill, and each one is supervised either by a foreigner or Chinese. I was introduced to work in the mill by my father, who had been employed there for 4 years, and left on his own accord owing to sickness, and now he is a houseman. I was working in the steel wire department, and the man in charge of this department was named "Woo San Kun", and he is now unemployed. There were thousands of workers employed in the mill, so I cannot say if there was another man there with the same name as myself. I came to Shanghai with my father from Kompo. Although a strike did take place, I was asked by the man in charge of my department to carry on work as usual. I do not know a man named "Yung Ah Kyi" or "Wah Deu Ah Sung". I came to Shanghai when I was 16 years of age. I cannot read.

Witness Ding Zeng Pea :- I am a representative from the Public Safety Bureau. The late Commissioner named Zung' asked me to investigate whether there was a worker named Mo Tsung Kho employed in the Ewo Cotton Mill, and from enquiries I found there was a worker of this name, but I could not find out any information regarding the strike, and also I did not find any proof for the reason of the strike.

Judge :- I will remand the case again for further investigation.

Decision,
P.M. 18/7/1919.

Remand (no fixed date) for trial pending production of evidence.

My
18/7/1919.

SHANGHAI MUNICIPAL POLICE D-2356

CRIME DIARY.

Date 16/7/32

"D" Division.

Yanitszepo? Police Station.

CRIME REGISTER No: Assistance to Chinese Authorities No.16/31. July 16th, 1932.

Diary Number:-	Nature of Offence:-		
Time at which investigation begun and concluded each day	See below	Places visited in course of investigation each day.	See below
RECORD OF INVESTIGATION.			

Moh Tsung Khe (莫忠基) appeared before the High Court of Appeal at 9 a.m. 15-7-32 on summons issued at the instance of the Prosecutor.

After a short hearing the case was again remanded and the charge sheet marked. "Remand for trial pending production of evidence."

R. Wardle,
D. I.

Officer i/c Special Branch

SQ,
for necessary action.

D. K. K.

Please note &

Pass to Reg.

18/7/32

Noted
Kuk
18/7

18/7/32

SHANGHAI MUNICIPAL POLICE 2356

CRIME DIARY.

D. 24/6/32

"D" Division.

Yangtze River Police Station.
Assistance to Chinese
Authorities, No. 16/1931. June 22nd, 1932.

Diary Number:-

Nature of Offence:-

Time at which investigation begun and concluded each day	See below	Places visited in course of investigation each day.	See below

RECORD OF INVESTIGATION.

a. c.
(A.B.)
On 16-6-32, Moh Tsung Khe was before Procurator Wong at 9a.m. on 16-6-32, and the following is the translation of the Court proceedings, Case No. 5/27718.

Mr. Tsien appeared for the police.

Accused:- I have no attorney to represent me. I am married with a family and have parents alive. I am at present employed as a coolie in the health department S.M.C. I was a coolie in the Ewo cotton mills before that and my wages were \$14.00 to \$15.00 per month. At present I earn 70 cents per day in the health department which is all I have to support my whole family on. My parents are old and I worked in the cotton mills for six years. I do not know whether there was a labour union formed by the mill workers or not. The workers at the cotton mills went on strike on several occasions, but I cannot remember the exact number of times. I only acted as a temporary worker at another place when the mill workers went on strike. The Ewo cotton mills are a British concern. It is not true that I was a No. 1 coolie in the mill and instigated the workers to go on strike. I am not a communist. There was no branch of the communist party in the mill, who called upon the workers to attend meetings. I do not know Yang Ah Nyi and Wha Der Sai Pao.

Rep. Kong Mai Sing of the S.P.S.B. :- The detective Ding Zung Hai who had charge of this case is not in court

SHANGHAI MUNICIPAL POLICE.

CRIME DIARY.

CRIME REGISTER No:-

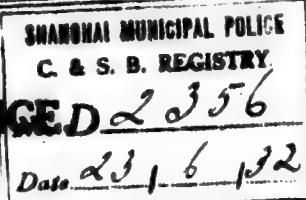
Division.

Police Station.

-19

Diary Number:-	Nature of Offence:-		
Time at which investigation begun and concluded each day		Places visited in course of investigation each day.	
RECORD OF INVESTIGATION.			
<p>today, but I represent him, but I ascertained before I came here, that this accused had been arrested on instructions from Nanking.</p> <p>Accused:- I was released on security previously and ten chief tenants of houses guaranteed me.</p> <p>Procurator to accused:- You will be again released on the same kind of security.</p> <p>Decision:- Accused to be acquitted, and to be summoned to appear.</p>			
 D. B. O.  J. H. Kelly 23:6:32.			

SHANGHAI MUNICIPAL POLICE D 2356
CRIME DIARY.



CRIME REGISTER No:— Assistance to Chinese Authorities, No. 16/1931, Yengtszepoo Police Station, June 22nd, 1932.

Diary Number:—	Nature of Offence:—		
Time at which investigation begun and concluded each day	See below	Places visited in course of investigation each day.	See below
RECORD OF INVESTIGATION.			

On 16-6-32, Moh Tsung Khe was before Procurator Wong at 9a.m. on 16-6-32, and the following is the translation of the Court proceedings, Case No. 5/27718.

Mr. Tsien appeared for the police.

Accused:- I have no attorney to represent me. I am married with a family and have parents alive. I am at present employed as a coolie in the health department S.M.C. I was a coolie in the Ewo cotton mills before that and my wages were \$14.00 to \$15.00 per month. At present I earn 70 cents per day in the health department which is all I have to support my whole family on. My parents are old and I worked in the cotton mills for six years. I do not know whether there was a labour union formed by the mill workers or not. The workers at the cotton mills went on strike on several occasions, but I cannot remember the exact number of times. I only acted as a temporary worker at another place when the mill workers went on strike. The Ewo cotton mills are a British concern. It is not true that I was a No. 1 coolie in the mill and instigated the workers to go on strike. I am not a communist. There was no branch of the communist party in the mill, who called upon the workers to attend meetings. I do not know Yang Ah Nyi and Wha Der Bai Pao.

Rep. Kong Mai Sing of the S.P.S.B. :- The detective Ding Zung Hai who had charge of this case is not in court

SHANGHAI MUNICIPAL POLICE.

CRIME DIARY.

CRIME REGISTER No:-

.....Division.
.....Police Station.
.....19

Diary Number:-	Nature of Offence:-
Time at which investigation begun and concluded each day	Places visited in course of investigation each day.

RECORD OF INVESTIGATION.

today, but I represent him, but I ascertained before I came here, that this accused had been arrested on instructions from Nanking.

Accused:- I was released on security previously and ten chief tenants of houses guaranteed me.

Procurator to accused:- You will be again released on the same kind of security.

Decision:- Accused to be acquitted, and to be summoned to appear.

S2,
Please note and
pass to Registry
Wife.

23:6:1882

Reg. Please
an above date
23:6:1882

Noted:
John
23/6/1882

Photo D. O. M.

Special Branch.

R. Wardrop,
D. I.

Reg. Please attach
file.

Attached
D.C. 23/6/1882

SHANGHAI MUNICIPAL POLICE.

D.C.

CRIME DIARY.

SHANGHAI MUNICIPAL POLICE

C. S. B. REGISTRY

No. D 2356.

Date 14/6/32.

SDP Division

Xangtazepoo Police Station.

CRIME REGISTER No.—Assistance to Chinese Authorities, No. 16/1931. June 13th, 1932.

Diary Number:	Nature of Offence:	
Time at which investigation begun and concluded each day	Places visited in course of investigation each day.	

RECORD OF INVESTIGATION.

On 13/6/32, a summons was received for the appearance of Moh Tsung Khe (莫宗熙) at 9a.m. on 16/6/32. Summons is issued by the Ningpo 2nd. Branch High Court and is marked, "before Procurator for investigation".

This case was sent before the above Court on 27/5/32, when the following judgement was handed down, "Case not entertained".

Summons served on Moh Tsung Khe, at 8p.m. on 13/6/32, by C.D.O. 194.

R. Wardrop,
D. I.

Officer in Charge Special Branch.

D. O. 8pm.

S2, Please see and pass to Registry to file.

Noted B.A. 14/6/32 14:6:32.

Re: Moh Tsung Khe
Date 14/6/32

SHANGHAI MUNICIPAL POLICE
C. & S. B. REGISTRY

N. D 2356.

D. 31.6.32.

Extract from Daily Intelligence Report dated 2.6.32.

Communist Propaganda

Following protracted proceedings, the Second Branch Kiangsu High Court on May 31, 1932, decided that the case against Mo Tseng Khe (馬振凱), who was arrested on a charge of propagating communism on the authority of a warrant issued at the instance of the Public Safety Bureau on May 10, 1931, be not entertained.

Reg. Please file
SPB 3/6/32.

SHANGHAI MUNICIPAL POLICE

SHANGHAI MUNICIPAL POLICE
C. & S. B. REGISTRY
No. D. 2356.

CRIME DIARY.

D. I. 116132

D. I. Division.

Assistance to Chinese Authorities Yangtze Poo Police Station.

CRIME REGISTER No.:—23/1931.

May 31st, 1932.

Diary Number:—	Nature of Offence:—
Time at which investigation began and concluded each day	Places visited in course of investigation each day.

RECORD OF INVESTIGATION.

Moh Tsung Khe (馬鍾熙) again appeared before the Court on 24-5-32, when the case was remanded for judgement on 31-5-32.

The case however was called for hearing on 27-5-32, and the following judgement given:-

"Case not entertained".

R. Wardrop,
D. I.

Officer i/o Special Branch.

O.S.B.

Information & form of return

for usual letters to be

prepared.

R. W. D.
27/5/32.

(not necessary)
in the end
27/5/32

usual letters
not necessary.
L. H.
2/6

D. G. Kirk
2/6/32.

Political
Extract of Proceedings in S. S. D. Court for 19 F. I. R. No. ... Stn. No. 7780

Reg. No. 19/780/780 Stn. Yungtunyoo Procurator
Fm. L. D. I. Revised 5-31. G. 100 m-5-31.

Yard, 2nd Flr.
JUDGE SHANGHAI MUNICIPAL POLICE
C. & S. D. REGISTRY

Sheet No. 2
For Judgment only.

No. D 2366
Date 31/5/32

Decision

Case not concluded.

M.L.G.

Sra Chung-kue

Extract of Proceedings in S. S. D. Court for 19 F. I. R. No.

Political

Sl. No. 2356

Reg. No. 2356/32
Fm. L.D.O. I. Revised 5-31. G. 100 m-5-31.

Stn. Yangtzeopon

Prosecutor

C & S. B. REGISTRY

V. D. 2356.

Proceedings

Mr. T S Lee appeared for the Police. D. 271 S. 132
Mr. Van Kyi Sung appeared for the accused.

Prosecutor :- I ask the Court to try this case.

Accused :- I have been employed in the New Mill for 6 years, as a labourer. I did not have anything to do with the Labourer's Union. I do not know if there is such a Union. I am not concerned in any Communist Party. I am not concerned in the affairs of the mill. I stopped work as the others workers stopped. I do not know anyone by the name of Van. I can only write my own name. I did not receive a letter from Van. I do not know Yang Ah Kyi or Woo. I have never seen the letter which is in the hands of the Court.

(Judge read over the letter to the accused)

Accused :- I do not know anything about the contents of the letter. I have never seen Woo. I was in Shanghai in 1927 but I never participated in any violent strike in that year. I do not know anyone by the name of Yang Doo Sun Wei.

Prosecutor :- This accused was implicated as a communist and name has been proved by evidence. I ask that he be punished.

Mr. Van :- The enquiries should have been open and the accused allowed to have a counsel.

Prosecutor :- The Prosecutor can institute prosecution against anyone after enquiries have been made. It is immaterial whether enquiries are made open or in private. The record of enquiries can be used in evidence.

Mr. Lee :- The evidence in this case is weak. The enquiries were not even according to Article 8 of the Remission Agreement and the accused had no chance to engage a counsel. The accused has been in custody for two months before prosecution was instigated.

Decision

Placing accused. Sl. No. 1. P.C.P.M. for Judgment.

M.L.G.

2. Further report in
due course

27/5/32

SHANGHAI MUNICIPAL POLICE

SHANGHAI MUNICIPAL POLICE
S. B. REGISTRY.

CRIME DIARY.

No. D 2356

"D" 27 1 Division

Yangtze River Police Station.

26th April 1932.

CRIME REGISTER No.:— Assistance to

Ch. Authorities (16) 931

Diary Number:—

Nature of Offence:—

Time at which investigation begun and concluded each day

See below.

Places visited in course of investigation each day.

See below.

RECORD OF INVESTIGATION.

Mo Tsung Khe (莫宗傑) again appeared before the Court on 25.4.32, when Mr. Chang, Assistant Municipal Advocate, informed Judge Sun that accused had been detained for a long time, and asked the court to consider the case. Judge to accused. "You should get a guarantor." Decision. "Accused to be released on security." Later same date accused was released on his relatives guaranteeing his future appearance in Court.

Rhardrop,
D.S.I.

Special Branch.

File
J.W.
27:4:32



Shanghai Municipal Council

Office of the Municipal Advocate

SHANGHAI MUNICIPAL POLICE C. & S. D. REGISTRY No. D 2356
Date 22 / 4 / 32

Shanghai, April 22, 1932.

Commissioner of Police,

In re Case of Mo Tsung Khe

Herewith original copy of my report to the Secretary General, and his remarks thereunder. The application was filed today. If an order is not made for the release of Mo Tsung Khe on or before one week from today, to-wit, Friday, April 29th, will you kindly issue instructions to the station concerned to release the accused forthwith on but not before April 29th. The attached memorandum, together with Mr. Jessenden's remarks, constitute your authority for such action.

R. J. Bryan, Jr.
Municipal Advocate.

Incl.
Report as stated.

of c. 15

Will you please arrange
as requested above?

27/4
32

M. T. Bryan
TP

PHONE
12049
12060

Shanghai Municipal Council



Office of the Municipal Advocate

Shanghai, April 21, 1932.

The Secretary General,
Shanghai Municipal Council.

In re Case of Mo Tsung Khe

In my annual report under the heading of "Right of Appeal in Extradition Cases", I referred to the case of Mo Tsung Khe. The accused in that case was arrested on May 10, 1931, upon application of the Public Safety Bureau. He was brought before the Court on May 11, 1931, at which time the Public Safety Bureau made its application in open court. The case was remanded from time to time until July 18, 1931, at which time the Court ordered the accused to be handed over to the Public Safety Bureau for trial, although no *prima facie* case had been proved. The Council thereupon appealed in three ways, as is outlined in detail in my annual report. The case eventually went to the Supreme Court, which dismissed the Council's kang kao. The District Court then overruled the Council's other two appeals, whereupon the Municipal Council appealed to the High Court, which has sent the case back again to the District Court for further order. The reason given by the High Court for sending the case back was because the judgment of the District Court was not properly dated. The Court "sidestepped" the real issue involved.

Our right of appeal in extradition cases is one which the Chinese will neither admit nor deny, and which we, on the other hand, must continue to demand. The accused

has

has now been detained for almost a year; and not a tittle of evidence has been produced against him. If the case is to continue, the accused will undoubtedly be held in custody until the expiration of the present agreement, which I think you will agree is most unfair.

Article 73 of the Code of Criminal Procedure provides as follows:

"The detention of an accused may not exceed two months during preliminary investigation and three months during trial; provided however, that if at the expiration of such period, necessity exists for continuance of detention, the Procurator or the Judge concerned shall move the Court for a ruling in the matter.

Upon the filing of a motion as described in the above paragraph, the Court may extend the period of detention, but no such period shall exceed two months. During preliminary investigation, an extension may be allowed once only.

Where upon the expiration of the period of detention the case has not yet been set for prosecution or trial, the writ of detention shall be deemed to be rescinded."

Under this section, it appears to me that the Council cannot hold the accused any longer, for he is still under investigation and no formal complaint has been laid. The maximum period which the Court is entitled to detain the accused would appear to be four months. If the accused is detained any longer, he would have a right of action against the Council in the Court of Consuls. I feel sure that the accused is not going to bring such an action, as he does not want to be handed over. He would rather remain in our custody than be handed over to the Public Safety Bureau. Nevertheless his further detention is most unjust. I have filed an application with the Court to have him released. Such application is in the nature of a writ of habeas corpus. If the application is not granted within one week after it is filed, I desire your permission

permission to request the Police to release Mo Tsung Khe without any further court proceedings.

You will recall several cases in the Provisional Court in which the Deputies ordered the release of persons who were detained more than fourteen days, which is the period prescribed in the old Mixed Court Rules of Procedure. The case has now, it appears, developed into a question of the prestige of the Public Safety Bureau, which the Judges are inclined to consider more seriously than the rights of the accused. I think you will agree that it is most unfair for the Court to proceed on such a theory.

Kindly let me have your instructions. I know that you are busy, so if you could just write on the bottom of this report your instructions, and return same to me, such action would be appreciated.

R. J. Bryan, Jr.
Municipal Advocate.

RTB/J

Apply to Court for release within one week. If release not effected within that time Police should release the man (if the man is D.I.)

SHANGHAI MUNICIPAL POLICE 2356.

CRIME DIARY.

Date 8. 1. 4. 1. 32.

"P" Division.

CRIME REGISTER No.— Assistance to Chinese Yangtszepoo Police Station.
Authorities (16), 1931. April 7th, 1932.

Diary Number:—	Nature of Offence:—
Time at which investigation begun and concluded each day	Places visited in course of investigation each day.

RECORD OF INVESTIGATION.

Mo Tsung Khe (馬振奎) arrested outside the Ewo Cotton Mill, 670 Yangtszepoo Road on 10-5-31, on behalf of the Chinese Authorities on a charge of being a Communist was again before the court on 18-3-32, for decision on a protest and an appeal lodged by the Municipal Police. Judge Sun of the Special District Court again ordered accused to be handed over to the Public Safety Bureau for trial.

On a further protest being entered by the Municipal Advocate, the Court then gave the following decision, That the case would be transferred again to the High Court regarding difference of opinion and appeal by the Police, and the Police should file another petition regarding the difference of opinion and appeal. Charge sheet marked, Awaiting to be sent to the Ind. Branch of Kiangsu High Court for trial.

On 6-4-32, a translation of a further appeal by the Municipal Advocate and of the judgement of Judge Sun of 18-3-32, was received. Copies forwarded herewith for information.

R. Warder,
D.S.I.

A. G. K. H.
Please return to Reg.

Noted
K. H.
8/4
Special Branch.

8/4/32

IN THE KIANGSU SECOND BRANCH HIGH COURT

Case No. 5/27718 Sta. No. 7750

Shanghai Municipal Council
(Yangtzeepoo Police Station).

Versus

Mo Taung Khe

Kang Kao

Comes now the S.M.C. and kang kaos from the ruling (received on March 30, 1938) rendered by the Shanghai First Special Area District Court and dismissing the appeal and Sung Ming I Nyi filed in the case in which application was made for handing over the accused Mo Taung Khe on suspicion of being a communist. The reasons for the kang kao are as follows:

(1) Article 377, Section 1 of the Code of Criminal Procedure is not applicable to a Sung Ming I Nyi.

The S.M.C., being dissatisfied with the decision rendered by the Shanghai Special Area District Court on July 18, 1931 whereby the accused Mo Taung Khe was ordered to be handed over to the Shanghai Public Safety Bureau, filed an appeal and a Sung Ming I Nyi with the Kiangsu Second Branch High Court and the Shanghai Special Area District Court respectively. According to the procedure, an appeal and a Sung Ming I Nyi are totally different. Therefore, what is provided in law in respect of an appeal cannot apply to a Sung Ming I Nyi. The original ruling which dismissed both the appeal and Sung Ming I Nyi of the S.M.C. was rendered in accordance with Art. 377, sec. 1 of the Code of Criminal Procedure. No matter whether Art. 337 of the Code of Criminal Procedure is applicable to this case or not, the provisions contained therein are in respect of an appeal only, and nothing is mentioned therein about a Sung Ming I Nyi. Thus it is apparent that a Sung Ming I Nyi is not subject to the provision of this article. However, the Court of original trial applies the provisions in respect of an appeal to a Sung Ming I Nyi. This does not seem to be proper.

(2) The Court of original trial has no right to dismiss the appeal in this case.

Being dissatisfied with the decision rendered by the Shanghai Special Area District Court, the S.M.C. filed an appeal with the competent superior court, i.e. the Kiangsu Second Branch High Court. This is lawful according to the provision of Art. 358 of the Code of Criminal Procedure. There was no point of defect in the appeal in this case so far as the procedure of law adopted was concerned. Even if the Kiangsu Second Branch High Court considers that the appeal is not well-grounded, the Kiangsu Second Branch High Court should decide according to its own discretion, and the Court of original trial should not have acted in its stead. However, the Judge who originally tried the case unmindfully dismissed the lawful appeal of the S.M.C. by misquoting Art. 377 of the Code of Criminal Procedure. This does not seem to be an act to uphold the law and there has not been such a precedent. Because of the fact that acts of arbitration on the part of the court of original trial might be avoided, a lawful appeal must be heard and decided by the competent superior court. If the power of dismissing or sustaining an appeal rests with the court which originally tried the case, then self-conceitedness will predominate and not a single appeal out of a hundred would be sustained by the Judge who was originally on the case. This goes a long way from the intention of the legislature by which the system of appeal was introduced and affects much the dignity of law. This is the reason why the S.M.C. considers it improper for the court of original trial to dismiss the lawful appeal in this case.

(3) The Sung Ming I Nyi filed by the S.M.C. is not without foundation in law and precedents can be quoted.

Art. 427 of the Code of Criminal Procedure provides:

"Where either of the measures described below taken by the commissioned judge or the judge acting upon request is the ground for complaint, application may be made to the court

to which such judge belongs to have such ruling set aside or altered, provided however, that in a case where the judge acting upon request is a judge of the local court, such application shall be made to the competent district court:

"(1) Relating to detention in custody, bail, seizure, or restitution of things seized;"

The Sung Ming I Nyi filed by the S.M.C. in this case was based on the article quoted above and was of legal foundation.

In the year 1930 the S.M.C. also filed a Sung Ming I Nyi in the case in which the Shanghai Public Safety Bureau applied for the handing over of the accused Zung Yoong Shi and the judge on the case ordered the accused to be handed over on December 10, 1930. A ruling (No. 27, Character "Sheng", 19th year of the Republic) was rendered by the District Court of Appeals as follows:-

"Original order set aside. Evidence of the case to be investigated and a new order to be rendered."

The circumstances regarding the extradition of the accused Zung Yoong Shi were similar to those in this case, the accused in both cases being on suspicion of committing the offence of a similar nature and the application made by the Shanghai Public Safety Bureau for handing over being also the same. Furthermore, it was entirely for the same reason that the S.M.C., being dissatisfied with the order of the court for the accused to be handed over, filed the Sung Ming I Nyi. However, in the case against Zung Yoong Shi the court below held that the Sung Ming I Nyi filed by the S.M.C. was lawful and rendered a ruling to the effect that the original order was to be set aside and that another order was to be given instead thereof. But as regards the Sung Ming I Nyi filed by the S.M.C. in this case, the court of original trial held that it was contrary to the procedure and dismissed same although there was a precedent of a recent origin.. Furthermore, according to the precedent as established in Zung Yoong Shi's case, the ruling rendered in respect of the Sung Ming I Nyi was made by the three judges of the District Court of Appeals. The ruling in this case, however, was made by the judge of original trial

4

alone, which is apparently discordant with the precedent when a contrast is made. This is also a point of dissatisfaction on the part of the S.M.C.

(4) The nature of an appeal, a Kang Kao and a Sung Ming I Nyi is different in the law of procedure.

According to the notes taken at the trial the judge who tried the case declared that although the S.M.C. appealed in three different ways (i.e. Shang Su, Kang Kao, and Sung Ming I Nyi), there is no difference in regard to their nature. This is rather difficult for us to understand. According to the law of procedure, an appeal, a Kang Kao and a Sung Ming I Nyi are different in their names and forms and will therefore be of a different nature. Then how can they be regarded as of the same nature? We would not prate on the point as it is clearly specified in law.

Further, according to the notes taken at the original trial, the judge declared that the S.M.C. appealed in three ways because it was dissatisfied with the ruling of the court. This is quite right because the S.M.C. deems it as a judicial proceeding in this case. Since it is a judicial proceeding there must be means of remedy according to law for fairness' sake, no matter whether it is a measure, an order or a ruling of the court. According to the rules of procedure, there are only three kinds of appeal, i.e. Kang Kao, Shang Su, and Sung Ming I Nyi. Of the three kinds of appeal at least one must be sustained by the court. Nevertheless, the court regarded the Kang Kao as contrary to the procedure and the appeal and Sung Ming I Nyi as being without foundation in law. This only means that there can be no remedy at all in this case.

In view of the foregoing reasons the S.M.C. feels confident that they are entitled to appeal and Sung Ming I Nyi as well for legal remedy according to law, the precedent and the principle of legislature; for otherwise, there shall be no possibility of protecting the interests of the party concerned and the whole community of the International Settlement.

Wherefore it is hereby prayed that the original ruling be set aside and that a new ruling be rendered so as to uphold the dignity

of the judiciary. All the reasons as set forth in the foregoing paragraphs only tend to show that the appeal and Sung Ming I Nyi in this case are not without foundation in the law of procedure. With regard to the points in substantive law on which the S.M.C. insists in the appeal and Sung Ming I Nyi filed by them, they hereby ask for the right of reservation as they are not going to disclaim same.

R. T. BRYAN, JR.
Counsel for the S.M.C.

Dated: the 1st of April, 1932.

IN THE SHANGHAI FIRST SPECIAL AREA, DISTRICT COURT

KILING

The appellant : Shanghai Municipal Council.

Counsel for the above: Mr. King S. Kum

The above-named appellant, being dissatisfied with the order rendered by the Shanghai Special Area District Court on July 18, 1931, in the case in which the Shanghai Public Safety Bureau applied for the handing over of one Mo Tsung Khe, filed an appeal and a Sung Ming I Nyi. The ruling is hereby rendered by this court as follows:

TEXT: Both the appeal and Sung Ming I Nyi are dismissed.

REASONS: According to the usual procedure, where a judgement is considered to be inadequate an appeal may be filed, and where execution is considered to have been improperly directed by the procurator a Sung Ming I Nyi may be lodged. In this case the Shanghai Public Safety Bureau asked the Shanghai Special Area District Court to render assistance in effecting the arrest of one Mo Tsung Khe. He was brought before the Court and ordered to be handed over. This was only an order rendered by a judge acting upon request. It was neither a judgment nor execution. Therefore it was not in accordance with the procedure when appeal and Sung Ming I Nyi were filed with this Court. This ruling is rendered as per text above in accordance with Art. 377, Sec. 1 of the Code of Criminal Procedure.

Read. March 30, 1932.

Judge : Shen Ping Yung.

SHANGHAI MUNICIPAL POLICE

REPORT

MANCHU MUNICIPAL POLICE 1932
& S. D. REGISTRY
S. B. D. 2350.
Yangtzeppoo Station,
c. 8.2.32.
Date Jan. 6th., 1932

Subject (in full) Pamphlets found in Ewo Cotton Mill, No. 46 Yangtzeppoo Road.

Made by and Forwarded by D.S.I. Wardrop.

Sir,

At 6.30a.m. 5-1-32, a number of pamphlets were found scattered in the spinning room of the Ewo Cotton Mill, No. 46 Yangtzeppoo Rd.

Two copies were handed to C.D.C. 140 on 6-1-32. Pamphlets advocate a strike if a full resumption of night work is not made by the No. 1 or Old Ewo Mill at above place.

Also ask for the release of Ho Tsung Khe (馬振鈞) arrested on 10-5-31 at above mill gate on a Warrant applied for by the Chinese Authorities charging him with being a communist.

This man is still in custody of the Municipal Police, Yangtzeppoo Station pending hearing of an appeal by the Municipal Advocate against the decision of the Special District Court to hand him over to the Chinese Authorities without making out a Prima Facie case against him.

I am, Sir.

Yours Obediently.

R. Wardrop,

D.S.I.

D.P.O.

Special Branch.

J. J. J. 1.1.32

CHAI MUNICIPAL POLICE
S. S. REGISTRY
B. D. 2356
J. 1. 32.

D.I.R. - 7-1-32

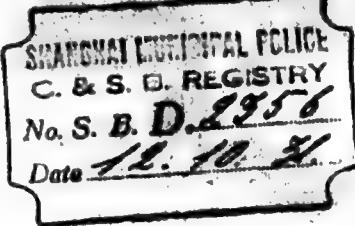
12. Ewo Cotton Mill - distribution of pamphlets

Copies of coloured leaflets purporting to emanate from the Old Ewo Night Shift Workers' Representative Group and urging the workers to declare a strike and demand the release of Ma Tsung-khe (馬振凱) were found scattered in the Spinning Room of the

Ewo Cotton Mill, 46 Yangtszepco Road at 6.30 a.m. January 5, 1932. Ma Tsung-khe who was arrested on May 10, 1931 by the Municipal Police on a warrant issued at the instance of the Chinese Authorities on a charge of being a communist, is still in custody of the Municipal Police pending the hearing of an appeal by the Municipal ~~Advocate~~ ^A Advocate against the decision of the Special District Court to extradite him to the Chinese authorities.

Reg'd
V. back to file.
JBF 7/1.

COPY



Station No. 7557

Extract of proceedings in Shanghai Special District Court for Saturday, Sept. 12, 1931.

Register No. 5/22466. Station Yangtszepoo. Judge Mr. Kau.

SHEET No. 13.

Case not heard, sheet not marked.

Judge Kau notified Mr. Kum that this case will be heard on the 26.10.31 p.m. and that a separate official notice will be issued later.

Reg. / File. A.B.R. 11/10.

Y. Poo

Alleged Communist arrested by the Municipal Police at
the instance of the Public Safety Bureau : Court Proceedings.

Mo Tseng-Khe, () who was arrested by the Municipal Police on the authority of a warrant issued by the S.S.D. Court at the request of the Public Safety Bureau on May 10, 1931 on Yangtszepoo Road (vide I.R. 12-5-31) on a charge of being a Communist, appeared before the Shanghai Special District Court on remand on July 18 when he was ordered to be extradited to the Chinese Authorities.

The decision was appealed against with the result that the accused was ordered to be detained in the custody of the Municipal Police

Extract of proceedings in Shanghai Special District Court for Saturday
July 11th 1931

Sheet No. 3

Proceedings.

Mr. T. C. Lee appeared for the police.

Mr. Yih Foh Kong appeared for the accused.

Judge to Mr. Lee: The Shanghai Public Safety Bureau have been sent telephone instructions to send to the Court the proof in this case but have failed to appear and in that case I will remand the case for trial next Saturday.

Decision

Remand till Saturday 18/7/31 am
S.P.S. Bureau to be notified to produce their evidence against the accused for consideration.

27/7/38

SHANGHAI 1

S. & S. REC.

No. S. R. D. 2358.

Saturday 18th July 1938

27/7/38

Extract of proceedings in Shanghai Special District Court for Stn. No/27720

Register No. _____ Station _____ Procurator _____ Judge Mr. _____

Date 27/7/27720, Month. July, Year.

Proceedings.

Mr. T.S. Lin appeared for the Police

Mr. Yih Foh Kong for the accused.

Accused in answer to Judge :- I do not know Yeo Yang Si alias Yeo Yang. I do not know how he knows me. I work in a mill. I have never joined any Communist Society. I have been working in the mill for 6 years, and have never seen this man.

Rep. Eng Van Sung : In answer to Mr. Yih:- We obtained proof from the Central Headquarters.

Rep. in answer to Judge:- We received these papers (proceeds.) from the Headquarters of the P.S.B.

Mr. Lin to Judge:- The Police cannot accept this proof, there is insufficient evidence, and it is a serious case. The representative must obtain proof that the accused is a communist. If it is so, then the Police have no objection to him being handed over. If they found communistic papers, documents or letters in his house it would be sufficient. The letters produced are only considered evidence. This man "Yeo" may be an enemy of the accused, nothing has been brought to show that the accused is a communist. The Police are willing to help the P.S.B., and hand him over but only on sufficient evidence. The accused has been detained a long time and the proof produced today is not satisfactory to the Police. I ask that the P.S.B. write to the Central Headquarters and Shantou to produce sufficient evidence.

Mr. Yih to Judge:- Only a statement is of no use. The court has asked for further evidence and still they have failed to produce it. The man who implicated the accused stated that this accused was the secretary of the Communist and this accused cannot even write his own name. It seems that the man has a grudge against this accused. I ask that the accused be allowed out on bail, and if the P.S.B. can produce evidence then he can be brought up again.

Rep. in answer to Judge:- It was on the strength of the Headquarters that we applied for his accused, and the proofs were sent from Xapok.

Extract of proceedings in Shanghai Special District Court for Saturday 20th July 1931

Register No. _____ Station I/200 Procurator _____ Judge Mr. Feng

Case No. S/27710. Sheet No. 5.

Mr. Lee to Judge:- I ask the court to write to the Central Headquarters to obtain the evidence, not through the P.S.B.

Judge to Mr. Lee:- The P.S.B. have applied many times for this accused, and have now brought proof, the Court cannot take it as not false, so the accused will be handed over.

Mr. Lee :- The Police appeal against the decision.

Decision. Accused to be handed over to the Shanghai Public Safety Bureau through their representative. During the period of custody, accused shall be detained in Station.

W. H. L.

S2,
For attention please


21:7:31.

SHANGHAI MUNICIPAL POLICE

CRIME DIARY.

Ref. No 16
No S. B. D. 2356
Date 20 - 7 - 31
"D" Division

CRIME REGISTER No:— Assistance to
Chinese Authorities

Yangtszepoo Police Station.
July 19, 1931

Diary Number:—4	Nature of Offence:— //
Time at which investigation begun and concluded each day	Places visited in course of investigation each day.

RECORD OF INVESTIGATION.

Mo Tsung Khe (莫忠勤) arrested outside the Two Cotton Mill, Yangtszepoo Road, on 10-5-31 on behalf of the Shanghai Public Safety Bureau on a charge of being a Communist appeared before the Court from remand on 11-7-31.

The charge sheet was endorsed S.P.S.Bureau to be notified to produce their evidence against accused for consideration.

Again appeared before Court on 18-7-31, when Judge Feng ordered him to be handed over to the Shanghai Public Safety Bureau, however protest was entered by Mr. Lea Assistant Municipal Advocate, and a further order made by Court, that accused was to be detained during the period of appeal. Meantime detained at Yangtszeoooo Station pending further proceedings

R. Wardrop
D. 8. 8. 3. 9.

Officer G/L.
Special Branch.

5. Alleged Communist arrested by the Municipal Police at the instance of the Public Safety Bureau

At 11.15 a.m. May 10, the Municipal Police arrested on a warrant issued by the Special District Court at the request of the Public Safety Bureau an alleged communist named Mo Tseng-khe (毛振聰) on Yangtszepec Road. He will appear before the 2nd Branch, Kiangsu High Court to-day, May 11, when the Public Safety Bureau will make application for his extradition.

SHANGHAI MUNICIPAL POLICE.

CRIME DIARY.

CRIME REGISTER No:— Assistance to Chinese Authorities

"D" Division.

Yangtazepoo Police Station.

May 14 1931.

Diary Number:—	3	Nature of Offence:—	/
Time at which investigation begun and concluded each day	13-5-31	Places visited in course of investigation each day.	S.D. Court.

RECORD OF INVESTIGATION.

The accused was arraigned before Judge Feng during the forenoon of the above date, when the Public Safety Bureau made application for the extradition of the accused, which was not granted on the evidence given: charge sheet marked, "Remanded pending enquiries to be made from the Organisation Department of the Central Government by the Shanghai City Bureau of Public Safety."

D.S. 206

Arthur Gilson
RW

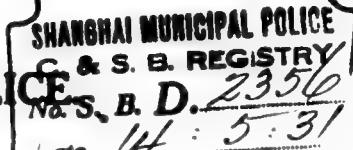
Special Branch

D. S. G. D. C. S. S.

D.B.O. D

SHANGHAI MUNICIPAL POLICE

CRIME DIARY.



"D" Division.

Yangtze River Police Station.
May 11 1931.

CRIME REGISTER No:— Assistance to
Chinese Authorities

Diary Number:—	2	Nature of Offence:—	11
Time at which investigation begun and concluded each day	9 a.m. to 12 noon 11-5-31	Places visited in course of investigation each day.	Special District Court.

RECORD OF INVESTIGATION.

The accused Mo Tsung Khe was arraigned before Judge Feng at the S.D. Court this a.m.

The representatives of the Shanghai Public Safety Bureau did not attend the Court, the Judge marked the charge sheet as follows:-

Remand to 15-5-31. Public Safety Bureau to be requested to produce evidence against accused.

D.S. Golder, Headquarters Special Branch, informed of the above.

Arthur Golder

D.S. 206

RW

Special Branch

Wack
M.S.
N.R.

SPECIAL INQUIRY**SHANGHAI MUNICIPAL POLICE****CRIME DIARY.**

SHANGHAI MUNICIPAL

S. B. REC.

V. S. B. D. 2356.

Date 11 - 5 - 31.

D. Division.

Yangtszepoo Police Station.

May 10 1931.

CRIME REGISTER No:— Assistance to
Chinese Authorities

Diary Number:—	1	Nature of Offence:—	//
Time at which investigation begun and concluded each day	11.15 am to 1 pm 10-5-31	Places visited in course of investigation each day.	Ewo Cotton Mill, 46 Yangtszepoo Road. 1057 Tah Wo Ka alleyway off Yangtszepoo Road.

RECORD OF INVESTIGATION.

At about 11.15 am above date, D.S. Golder and C.D.S.I. Phen Lien Pih attached to Headquarters, Special Branch, reported by telephone from the Ewo Cotton Mill offices 46 Yangtszepoo Road, requesting assistance to effect the arrest of a male Chinese employee on warrant.

The undersigned together with C.D.C.113 visited the above mill, where the arrest was effected at the Ewo Mill main gate at about 11.30 am by D.S. Golder and C.D.S.I. Phen Lien Pih. The accused Mo Tsung Khe (楊振懶), age 30 years, native of Chinkiang, Kompo, m/mill coolie, residing at 1057 Tah Woo Ka alleyway, Yangtszepoo Road (Wayside District) was brought to this station and then immediately taken to his home, above address, where it was discovered that he resided in a downstairs middle room with his wife and relations. This room was searched in the presence of the undersigned and accused, but nothing incriminating found, the search being made by D.S. Golder and C.D.S.I. Phen Lien Pih.

The accused was then brought to this station and further interrogated by the above two detectives, a statement as attached being taken down in writing by D.S. Golder, same being made by the accused as the result of questions put to him by D.S. Golder.

The accused will be arraigned before the S.D.Court on 11-5-31 on warrant which states as follows:-

SPECIAL INQUIRY
SHANGHAI MUNICIPAL POLICE.

CRIME DIARY.

Division.

Police Station.

19

CRIME REGISTER No:—

Diary Number:—	Nature of Offence:—
Time at which investigation begun and concluded each day	Places visited in course of investigation each day.

RECORD OF INVESTIGATION.

Warrant and Search Warrant No.2081 issued at request of Shanghai Public Safety Bureau. Mo Tsung Khe, address Old Ewo Mill, Yangtszepoo. To search and seize communistic literature in the above mentioned premises and arrest the above named accused.

Accused states he has been a residence of the Settlement for about 16 years, following employment as a coolie as given in his statement.

Enquiries by D.I. Tolder, C.D.S.I. Phen Lien Pih and C.D.C.113.

D.S. 206

William Sillen
RW

SPECIAL INQUIRY**SHANGHAI MUNICIPAL POLICE.****REPORT OF POLICE INVESTIGATION**

The following is the statement of Mo Tsung Khe
native of Tsingkiang taken by me D.S. Golder
at 12 noon on the 10-5-31 and interpreted by C.D.S.I. Phen Lien Pih

馬根堂
My name is Mo Tsung Khe. I am aged 30, native of Tsingkiang, residing at No.11057 Tah Wo Ka, off Yangtszepoo Road. I first came to Shanghai from the village of Woo Tsung in the Hsien of Tsingkiang in the Kiang su province, at 16 years of age, when I went to live at the Mai Sing Ka, off Yangtszepoo Road. I came to Shanghai with a friend of my father named "Tseu" who has since died and after arrival in Shanghai, I resided at the Mai Sing Ka for about 2 years, when I went to live at 191 Tah Woo Ka. I was married 7 years ago in my native place, and since I was married, I have not left Shanghai. When I arrived in Shanghai, I found work in the Tong Foong Cotton Mill, Yangtszepoo Road, I was employed there for one year and my next employment was in the Ewo Cotton Mill, Yangtszepoo Road, when I stayed for 2 years, from there I went to Sih Young Iron Works, Yangtszepoo Road for 3 years, from here I went to the Hung Dah Plumbing Works, Ting Soo Tang Ka, Frenchtown, and after being there for four years, I went back to the Ewo Cotton mill, where I have been employed since. I have never been arrested by the police before either here or in my native place. I have never written to anyone in Hankow, the only letters I have written were addressed to my relations in and around Tsingkiang. During my youth, I went to school for a time between age 14 and 16, since then I have received no education. I was introduced to the Toong Foong and Ewo Mills by one Lee Sang Ching, who was my tenant living in the Mai Sing Ka. My other employment I obtained, Sih Yoong Iron Works introduced by my father Mo Sze Sung. My father is still alive and residing with me in the Tah Woo Ka. I have never been a member of the communist party, nor have any dealings with any of its members.

SPECIAL INQUIRY
SHANGHAI MUNICIPAL POLICE.

REPORT OF POLICE INVESTIGATIONS.

The following is the statement of Mo Tsung Khe
native of Tsingkiang taken by me D.S. Golder
at 12 noon on the 10-5-31 and interpreted by C.D.S.I. Phen Lien Pih

My name is Mo Tsung Khe. I am aged 30, native of Tsingkiang, residing at No.11057 Tah Wo Ka, off Yangtszepoo Road, I first came to Shanghai from the village of Woo Tsung in the Hsien of Tsingkiang in the Kiangsu province, at 16 years of age, when I went to live at the Mai Sing Ka, off Yangtszepoo Road, I came to Shanghai with a friend of my father named "Tseu" who has since died and after arrival in Shanghai, I resided at the Mai Sing Ka for about 2 years, when I went to live at 191 Tah Woo Ka. I was married 7 years ago in my native place, and since I was married, I have not left Shanghai. When I arrived in Shanghai, I found work in the Tong Foong Cotton Mill, Yangtszepoo Road, I was employed there for one year and my next employment was in the Ewo Cotton Mill, Yangtszepoo Road, when I stayed for 2 years, from there I went to Sih Young Iron Works, Yangtszepoo Road for 3 years, from here I went to the Hung Dah Plumbing Works, Ting Soo Tang Ka, Frenchtown, and after being there for four years, I went back to the Ewo Cotton mill, where I have been employed since. I have never been arrested by the police before either here or in my native place. I have never written to anyone in Hankow, the only letters I have written were addressed to my relations in and around Tsingkiang. During my youth, I went to school for a time between age 14 and 16, since then I have received no education. I was introduced to the Tong Foong and Ewo Mills by one Lee Sang Ching, who was my tenant living in the Mai Sing Ka. My other employment I obtained, Sih Young Iron Works introduced by my father Mo Sze Sung. My father is still alive and residing with me in the Tah Woo Ka. I have never been a member of the communist party, nor have any dealings with any of its members.